

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

US EPA RECORDS CENTER REGION 5



515509

UNITED STATES OF AMERICA,

Civil No. 4-80-469

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Hubert H.
Humphrey, III, its Department
of Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,
INC.; and PHILIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

REILLY TAR & CHEMICAL
CORPORATION'S ANSWERS
TO INTERROGATORIES OF
CITY OF ST. LOUIS PARK

Defendant Reilly Tar & Chemical Corporation makes answers to City of St. Louis Park's Interrogatories, as follows:

Interrogatory No. 1. Identify all persons with first-hand knowledge of the facts regarding the negotiations for and the execution of the Agreement for Purchase of Real Estate of April 14, 1972, referenced in paragraph 39 of your amended answer to the amended complaint in intervention of the City of St. Louis Park.

a) Identify all other persons with knowledge of the facts regarding the negotiations for and the execution of the Agreement for Purchase of Real Estate of April 14, 1972, referenced in paragraph 39 of your amended answer to the amended complaint in intervention of the City of St. Louis Park.

b) Fully state the factual basis for the allegation of that paragraph that "The complaints giving rise to this action were settled by agreement between the State of Minnesota, the City of St. Louis Park and this defendant. . . ."

i) Identify all documents relevant to that allegation.

ANSWER: Herbert Finch
8213 Virginia Circle
St. Louis Park, Minnesota 55429

Chris Cherches
Reno, Nevada

Thomas E. Reiersgord
Yngve & Reiersgord
6250 Wayzata Boulevard
Minneapolis, Minnesota 55416

Wayne G. Popham
Popham, Haik, Schnobrich,
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4344 IDS Center
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Rolfe Worden
Popham, Haik, Schnobrich,
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P. C. Reilly
Reilly Tar & Chemical Corporation
1510 Market Square Center
151 North Delaware Street
Indianapolis, Indiana 46204

T. E. Reilly, Sr.
Reilly Tar & Chemical Corporation
1510 Market Square Center
151 North Delaware Street
Indianapolis, Indiana 46204

Dr. W. R. Wheeler
502 W. 77th Street
Indianapolis, Indiana 46260

Frank Pucci
2837 Quentin Ave. So.
St. Louis Park, Minnesota 55416

(a) Members of the St. Louis Park City Council,
1965-1972; Harvey McPhee.

(b) Because discovery has not yet been completed, a complete answer to this interrogatory cannot be given at this time. However, for years prior to the Agreement for Purchase of Real Estate dated April 14, 1972 ("Purchase Agreement"), there was a disagreement between Reilly Tar & Chemical Corporation ("Reilly"), the City or Village of St. Louis Park ("City") and the State of Minnesota ("State"), concerning the City's allegation that Reilly had contaminated the soil, surface water and ground water in the vicinity of the site and whether Reilly had contaminated the City water supply. Moreover, discussions concerning the possible acquisition of the Reilly site began as early as 1958. It was Reilly's expectation that if the City did acquire the property, it would buy it "as is," that is, free from any further claims with

respect to soil or water contamination. Even prior to the lawsuit which was commenced in October of 1970, in negotiations concerning the sale of the land, City officials and lawyers stressed the fact that if the property were not sold, Reilly would have extensive cleanup obligations with respect to alleged soil and groundwater contamination. Those statements were regarded by Reilly as important. Accordingly, Reilly insisted that the property be sold only upon the condition that the City assume responsibility for that contamination. The 1970 lawsuit was commenced during these negotiations. The State of Minnesota knew that the City and Reilly were continuing to negotiate over the price and other terms of the purchase as a means of settling the existing dispute and agreed that the case should be stricken from the court calendar in 1971, with the expectation that if the City and Reilly agreed upon a purchase, the lawsuit would not be reinstated. Although the State, in 1973, refused to dismiss the action because the extent of the cleanup that would be required of St. Louis Park had not been decided upon, the State's intent was to look to the City, not Reilly, thereafter. All parties intended in 1973 that Reilly be released of any further liability. The purchase agreement and the hold harmless agreement were intended to cover all subjects which had been discussed between the parties, not merely the issues in the lawsuit. For a further discussion, see "Memorandum of Reilly Tar & Chemical

Corporation in Opposition to the State of Minnesota's Motion for Summary Judgment on First Affirmative Defense", June 24, 1983 and documents referred to therein.

i) Because discovery has not been completed, a complete answer cannot be given at this time. See, however, the previous answer.

Interrogatory No. 2. Identify all persons with first-hand knowledge of the facts regarding the negotiations for and the execution of the hold harmless agreement referenced in paragraph 40 of your amended answer to the amended complaint in intervention of the City of St. Louis Park.

a) Identify all other persons with knowledge of the facts regarding the negotiations for and the execution of the hold harmless agreement referenced in paragraph 40 of your amended answer to the amended complaint in intervention of the City of St. Louis Park.

b) Fully state the factual basis for the allegation of that paragraph that: "The complaints giving rise to this action are not the responsibility of this defendant. . . ."

i) Identify all documents relevant to that allegation.

ANSWER: Chris Cherches
Wayne Popham
Rolfe Worden
Thomas E. Reiersgord
Frank Pucci

(a) P. C. Reilly
T. E. Reilly, Sr.
Members of the St. Louis Park City Council, 1973

(b) See answer to Interrogatory 1.

Interrogatory No. 3. Fully state the factual basis for the allegation of paragraph 41 of your amended answer to the amended complaint in intervention of the City of St. Louis Park that the referenced administrative proceedings fully adjudicated the liability of the City of St. Louis Park and the non-liability of Reilly.

a) Identify all persons with first-hand knowledge of the facts relevant to that allegation.

b) Identify all other persons with knowledge of the facts relevant to that allegation.

c) Identify all documents relevant to that allegation.

ANSWER: The administrative proceedings before the Minnesota Pollution Control Agency resulted in findings and conclusions (1) that the October 1970 action by the State and the City regarding surface and ground water contamination by coal tar distillates was settled through the purchase of the property by the City, and (2) that the City was responsible for submitting to the Agency a plan for and commitment to correct the ground water pollution.

(a) Wayne Popham
Rolfe Worden
Susan Cherches
David Rudberg
C. A. Johannes
Members of the staff and Board of the Minnesota Pollution Control Agency.

(b) See answer to 3(a).

(c) Reilly is at this time unable to identify all documents relevant to this allegation, since discovery is not complete. However, all relevant documents are expected to be in the files of the State PCA, the City, or their attorneys.

Interrogatory No. 4. Fully state the factual basis for the allegations of paragraph 42 of your amended answer to the amended complaint in intervention of the City of St. Louis Park.

a) Identify all persons with first-hand knowledge of the facts relevant to that allegation.

b) Identify all other persons with knowledge of the facts relevant to that allegation.

c) Identify all documents relevant to that allegation.

ANSWER. Because discovery and trial preparation are not complete, a complete answer to this interrogatory cannot be given at this time. However, all of the discovery to date reveals that the events and actions upon which Reilly's liability in this action might be predicated occurred prior to the enactment of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Interrogatory No. 5. Fully state the factual basis for the allegations of paragraph 43 of your amended answer to the amended complaint in intervention of the City of St. Louis Park.

a) Identify all persons with first-hand knowledge of the facts relevant to that allegation.

b) Identify all other persons with knowledge of the facts relevant to that allegation.

c) Identify all documents relevant to that allegation.

ANSWER: Since this paragraph of Reilly's amended answer relates only to the legal sufficiency of the City's amended complaint, no answer is necessary.

Interrogatory No. 6. Fully state the factual basis for the allegation of paragraph 1 of your counterclaim that: "Under the hold harmless agreement, the City is liable to Reilly with respect to any and all claims asserted herein by the Plaintiff State of Minnesota."

a) Identify all persons with first-hand knowledge of the facts relevant to that allegation.

b) Identify all other persons with knowledge of the facts relevant to that allegation.

c) Identify all documents relevant to that allegation.

ANSWER: See answers to interrogatories 1 and 2.

Interrogatory No. 7. State whether you contend that the alleged carrying of wastes to the property south of Reilly's plant as stated in paragraph 2 of your counterclaim contributed to the groundwater contamination which is the subject matter of this litigation.

a) If so, fully state the factual basis for that contention.

b) If so, identify all persons with first-hand knowledge of the facts relevant to that contention.

c) If so, identify all other persons with knowledge of the facts relevant to that contention.

d) If so, identify all documents relevant to that contention.

ANSWER: Yes.

(a) The flooding of the Reilly property by the City necessarily picked up contamination from the settling basin, ditches, and surface of the ground. This contamination was transported by flood waters across Walker Street and to the bog south of the Reilly plant. It was also carried to the Reilly deep well on the premises, where it entered the well either through the top or around the sides of the well casing.

(b) Herbert Finch
W. A. Justin
H. R. Horner
Richard Hennessy
F. J. Mootz

(c) Carl Leshner
T. E. Reilly, Sr.
Members of the St. Louis Park City Council and
administrative staff, 1918-1972.

(d) Photographs of flooding and other documents,
previously produced.

Interrogatory No. 8. Fully state the factual basis for the allegation of paragraph 2 of your counterclaim that: "the City either negligently or intentionally, and in an unreasonable manner, diverted the flow of surface water. . .".

a) Identify all persons with first-hand knowledge of the facts relevant to that allegation.

b) Identify all other persons with knowledge of the facts relevant to that allegation.

c) Identify all documents relevant to that allegation.

ANSWER: Sometime prior to 1972, the City constructed a culvert, which is shown on photographs, to channel waters from adjacent City streets onto the Reilly property. This channel was fed by curbs and gutters also constructed by the City. This construction was a deliberate act by the City, not consistent with the "reasonable use" theory of surface waters which prevails in Minnesota and which evidenced a conscious decision by the City to make use of the Reilly property in lieu of a storm sewer.

a) See answer to Interrogatory No. 7(b) above, plus employees and officials of St. Louis Park.

b) See answer to Interrogatory No. 7(c) above.

c) See answer to Interrogatory No. 7(d) above.

Interrogatory No. 9. Fully state the factual basis for the allegation of paragraph 3 of your counterclaim that the construction of roads and sewers resulted "in any alleged contamination of the drinking water aquifers."

a) Fully describe the manner in which the Reilly deep well "was left open and unprotected" as alleged in that paragraph.

b) Identify each occasion when roads and sewers were constructed in the immediate vicinity of the Reilly deep well when the well was left open and unprotected as alleged in that paragraph.

c) Identify all persons with first-hand knowledge of the facts relevant to the matters asked about in interrogatories 9, 9(a), and 9(b).

d) Identify all other persons with knowledge of the facts relevant to the matters asked about interrogatories 9, 9(a), and 9(b).

e) Identify all documents relevant to the matters asked about in interrogatories 9, 9(a), and 9(b).

ANSWER: Since discovery and trial preparation are not complete, a complete answer to this interrogatory cannot be given at this time. However, the streets and sewers constructed by the City in 1975 were located close to the Reilly deep well. On at least one occasion in 1975, employees of the Minnesota Department of Health observed the well open and unprotected. The top of the well was observed to be under water. In addition, the well was observed to be under water in 1978.

(a) See previous answer.

(b) See previous answer.

(c) John Arnold
Roman Koch
John Ross
Brian Aho
Thomas E. Reiersgord

(d) See previous answer.

(e) (1) See handwritten notes of John E. Arnold, Doc. Nos. 6200403-6200407; 6200424-6200426; 6200435-6200438.

(2) See letter from Edwin H. Ross to David Rudberg, September 12, 1975, Doc. No. 1000016 and 7200155.

(3) See handwritten notes September 25, 1975, Doc. No. 3000045.

(4) See handwritten notes September 24, 1975, Doc. Nos. 7200169-70.

(5) See handwritten notes October 6, 1975, Doc. No. 1000014 and 3000044.

Interrogatory No. 10. Fully state the factual basis for any contention that Reilly is entitled to recover its attorneys' fees in this matter from the City of St. Louis Park.

a) Identify all documents relevant to such a contention.

ANSWER: In a document executed June 19, 1973, the City agreed to hold Reilly harmless with respect to all claims which might be asserted by the State of Minnesota. This was intended to cover all of the subjects which had been referred to in communications, reports, etc. concerning the Reilly site and adjacent property. Reilly cannot be held harmless unless its attorneys' fees and other litigation expenses are reimbursed.

(a) See answer to Interrogatory 1.

Interrogatory No. 11. Identify each person Reilly expects to call as an expert witness at trial.

a) State the subject matter on which each expert is expected to testify.

b) State the substance of the facts and opinions to which each expert is expected to testify, including a summary of the grounds for each opinion.

c) Identify all documents, including any learned treatises, upon which each expert will rely in support of his opinion.

ANSWER: Since discovery and trial preparation are not complete, a complete answer to this question cannot be given at this time. However, see Reilly's pre-trial statement for a list of probable expert witnesses. Reilly is unable, at the present time, to give a summary of the facts and opinions to

which each expert is expected to testify. At such time as their testimony becomes certain enough to enable counsel for Reilly to summarize it, this question will be answered more fully. However, on May 18, 1983, Reilly presented to the City a report prepared by Environmental Research & Technology, Inc. entitled "Recommended Plan for a Comprehensive Solution of the Polynuclear Aromatic Hydrocarbon Contamination Problem in the St. Louis Park Area." This report consisted of four volumes and approximately 1400 pages. Dr. Francis T. McMichael, Dr. Peter Shanahan, John Craun, and Dr. Julian Andelman, and others, participated in the preparation of this report and they will testify to its contents when this case is tried before the Court and Jury. Dr. Carl Poel, who is listed as an expert witness in Reilly's pre-trial statement, will testify concerning experimental and epidemiologic evidence which shows that the PAH in coal tar and creosote oil may in fact be enhancing natural defenses for cancer prevention. Dr. Joseph R. Brooks will testify to laboratory analyses made on soil and water samples taken in the St. Louis Park area. Jerry Rick will testify concerning exploratory work done on the Reilly deep well in 1982 and 1983. Drs. Irving Tabershaw and Leo Gaudette will testify concerning an appropriate standard for PAH in potable waters.

Interrogatory No. 12. Identify each person retained, specially employed, or consulted by Reilly as an expert in anticipation of litigation or in preparation for trial who is not expected to be called as a witness at trial.

ANSWER: Reilly objects to this interrogatory on the ground that it calls for attorney work product.

Interrogatory No. 13. Identify with sufficient specificity to allow a motion to produce any written statement and any substantially verbatim recital of an oral statement made by any party to this litigation in the possession of Reilly. Identify each person making each statement.

ANSWER: Reilly objects to this interrogatory on the ground that it calls for attorney work product. Without waiving such objection, Reilly states that it has no written statements made by any party to this litigation other than pleadings on file herein and correspondence with attorneys for the parties.

Interrogatory No. 14. If you contend that any entity other than Reilly Tar is responsible for the fact that creosote and coal tar became deposited in the Reilly deep well, otherwise known as well 23, then:

a) Fully state the factual basis for that contention including, but not limited to, the approximate time when that material was deposited in the well and the mechanism of travel by which the material entered the well.

b) Identify all persons with first-hand knowledge of the facts relevant to that contention.

c) Identify all other persons with knowledge of the facts relevant to that contention.

d) Identify all documents relevant to that contention.

ANSWER: Since discovery and trial preparation have not been completed, a complete answer to this interrogatory cannot be given at this time. However, Reilly believes that coal tar and creosote were accumulated in the Reilly deep well over a period of fifty years when flood waters dumped on the

Reilly property by the City flooded the plant, including the area where the well was located. In addition, see answers to Interrogatories 7, 8 and 9.

Interrogatory No. 15. To the extent not included in your answers to the previous interrogatories, fully state the factual basis for your claims of indemnity and contribution against the City of St. Louis Park.

a) Identify all persons with first-hand knowledge of the facts relevant to those claims.

b) Identify all other persons with knowledge of the facts relevant to those claims.

c) Identify all documents relevant to those claims.

ANSWER: Reilly's claims for contribution and indemnity are based upon the agreements entered into in 1972 and 1973 and upon the actions of the City in aggravating the contamination problems on the plant site, on the property to the south, and in the Reilly deep well.

(a) See answers to previous interrogatories.

(b) See answers to previous interrogatories.

(c) See answers to previous interrogatories.

Dated: July 14, 1983.

AS TO OBJECTIONS:

DORSEY & WHITNEY

By Edward J. Schwartzbauer
Edward J. Schwartzbauer
Becky A. Comstock
Michael J. Wahoske
2200 First Bank Place East
Minneapolis, Minnesota 55402

STATE OF MINNESOTA)

) ss:

COUNTY OF HENNEPIN)

Robert Polack being first duly sworn, states that he is the Vice President of Reilly Tar & Chemical Corporation, and that he makes the foregoing answers to interrogatories on behalf of said corporation.



Subscribed and sworn to before

me this 14th day of July, 1983.

